



DIVORCE ORDERS:

Requirements and how to word
the award of pension interest

OLDMUTUAL

DO GREAT THINGS EVERY DAY

FOR ALL FUNDS ADMINISTERED BY OLD MUTUAL CORPORATE ADMINISTRATION

The pension and provident funds being administered by Old Mutual Corporate Administration Services will only consider a divorce order as binding against a fund it administers if ALL of the following requirements are met:

- 1.** The marriage being terminated/dissolved must not be a marriage that was out of community of property entered into on/after 01/11/1984 in terms of an antenuptial contract by which community of property, community of profit and loss, and the accrual system must be excluded. This is because of the provision of section 7(7)(c) of the Divorce Act; and
- 2.** The divorcing parties must be granted a decree of divorce in terms of the Divorce Act 70 of 1979; and
- 3.** The award of pension interest to the non-member former spouse must be included in the divorce order, and therefore, if such award is made in a settlement agreement, such agreement must be made an order of court; and
- 4.** On the date of the divorce order being granted, the member must be an active contributing member of the Fund; and
- 5.** The divorce order cannot award an amount greater than 100% pension interest to the non-member former spouse; and
- 6.** The divorce order cannot award investment growth on the pension interest award to the non-member former spouse unless it complies with s37D of the Pension Funds Act; and
- 7.** The divorce order must expressly name the Fund and must order the Fund to endorse its record in respect of its member and to effect payment of the pension interest award to the non-member former spouse; and
- 8.** The wording used to award pension interest should be along the following lines:
The ("Member") is a member of the Fund with Fund No. and Member No.
The ("Non-Member"), as the non-member spouse, is awarded % (..... percent) of the Member's pension interest in such Fund, calculated as at date of divorce. In terms of the Income Tax Act, the Non-Member is liable for the income tax payable on this award. The Fund is ordered to endorse its record and to pay the Non-Member the award in accordance with this clause. The registrar of the court is ordered to forthwith notify the Fund that it is to endorse its record in accordance with this clause.
- 9.** If the member belongs to a back-to-back arrangement - i.e., a fund with both a Pension Fund and Provident Fund - the above wording will need to be altered to refer to both Funds, if it is the intention of the parties; and
- 10.** If one or more of the above requirements are not met, Old Mutual and the Fund reserves the right to regard the award of pension interest as not binding on the Fund; and
- 11.** Should the member exit the Fund during the divorce negotiations and before the date of the divorce order being granted, the non-member will need to interdict the Fund to prevent payment of the relevant portion of the member's benefit and the reference to pension interest (in the divorce order) will need to refer to an award of a percentage of the benefit of the member calculated as at the date of the member's exit from employment.